

**MINUTES  
HEARING OFFICER  
FEBRUARY 18, 2014**

**Minutes of the regular public hearing of the Hearing Officer, of the City of Tempe, which was held at the Council Chambers, 31 East Fifth Street, Tempe, Arizona.**

**Present:**

Vanessa MacDonald, Hearing Officer  
Steve Abrahamson, Planning & Zoning Coordinator  
Diana Kaminski, Senior Planner  
Sherri Lesser, Senior Planner  
Diane McGuire, Administrative Assistant II

**Number of Interested Citizens Present: 10**

**Meeting convened at 1:40 PM and was called to order by Ms. MacDonald. She noted that anyone wishing to appeal a decision made by the Hearing Officer would need to file a written appeal to that decision within fourteen (14) days, by March 4, 2014 at 3:00 PM, to the Community Development Department.**

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1. Ms. MacDonald noted that the Hearing Officer Minutes for February 4, 2014 had been reviewed and approved.

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2. Request approval to abate public nuisance items at the **FELSINGER PROPERTY (PL140015)** located at 1031 East Lilac Drive. The applicant is the City of Tempe.

There was no one present to represent the property owner.

Michael Spencer, Code Compliance Inspector, requested a 180 day open abatement for the property located at 1031 East Lilac Drive. The property is in violation (CE134731) due to uncultivated plants, weeds, tall grass and accumulated palm frond debris. Mr. Spencer noted the home has been in violation since November 2013 and that the property owner has not taken any corrective action.

Ms. MacDonald stated that this property owner has been thru the abatement process several times in the past.

There was no public input.

**DECISION:**

Ms. MacDonald approved abatement proceedings for PL140015/ABT14001 for an open period of 180 days.

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3. Request approval to abate public nuisance items at the **TIGHTLINES INTERNATIONAL LLC PROPERTY (PL140016)** located at 1929 East Redmon Drive. The applicant is the City of Tempe.

There was no one present to represent the property owner.

Jack Scofield, Code Compliance Inspector, requested a 180 day open abatement for the property located at 1929 East Redmon Drive. The property is in violation (CE134207) due to trash, debris and miscellaneous items from the driveway and front and rear yards and to tow the inoperable/unregistered vehicle. The vehicle has been removed, Mr. Scofield stated. Mr. Scofield noted the home has been in violation since October 2013 and that the property owner has not taken any corrective action.

Mr. Scofield confirmed, in response to a question from Ms. MacDonald, that there has been no response from the property owner.

There was no public input.

**DECISION:**

Ms. MacDonald approved abatement proceedings for PL140016/ABT14002 for an open period of 180 days.

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4. Review of approval for a Use Permit to allow a new 65 ft. Monopine and equipment shelter for **VERIZON WIRELESS PHO POLERIO (PL130339)** located at 4801 South Lakeshore Drive. The applicant is Carole Parks of Reliant Land Services Inc.

Carole Parks of Reliant Land Services Inc. was present to represent this case. She acknowledged her understanding of the assigned Conditions of Approval.

Sherri Lesser, Senior Planner, noted that this Monopine will be located in the PCC-2, Planned Commercial Center General District. It is proposed for the north side of Baseline Road on the east side of Lakeshore Drive. The associated ground equipment will be outside the adjacent two story office building which is currently a multi-tenant commercial office use. The Monopine is proposed at the west side of the building adjacent to the parking spaces. The application was approved in 2009 but never installed. The design will allow for future expansion or co-location.

Ms. MacDonald questioned Ms. Parks whether she had contacted the nearby residents. Ms. Parks stated that she had emailed one neighbor that was opposed to the project but received no response to that email. She however had a chance to speak with that neighbor prior to the Hearing Officer meeting. Ms. Parks continued that notice was mailed to property owners within 300'. She was aware of 1 postcard that was returned to staff.

Ms. MacDonald noted that she had a speaker card from Mr. Nathan Giles regarding this case.

Mr. Giles expressed his dissatisfaction with the location of this Monopine and stated that his residence is the one closest to this project, located within 30 ft. He referred to the earlier 2009 case which was never built, and stated that he had just found out that this current case was to be presented to the Hearing Officer today. He stated that he had never received any notification. (Research by staff following this hearing, indicated that the postcard notification was directed to the address that Mr. Giles indicated, however it was sent to the name on the Maricopa County website records which was Nasim Robins and returned as 'not known'.)

Mr. Giles stated that this Monopine would stick out like a sore thumb and affect his quality of life as it would be detrimental to his enjoyment of his outdoor patio area in particular. He stated that he did not see any reason why cell phone towers needed to be located every half mile. He presented a letter of opposition from Ms.

Marlene Thronson. Ms. Thronson was present but declined to speak, stating that she was in agreement with Mr. Gile's remarks.

Ms. Parks returned to the podium and explained that the earlier candidates for this site, from 2005 and 2009, were before her involvement. She confirmed that prior to this hearing, she also had a courtesy notification mailed to adjacent property owners. Several of these mailings were returned and she had not gone door-to-door to notify the individuals the returned mailings were intended for.

Ms. MacDonald referenced the public's desire to be technology viable which was behind the increase in cell phone towers. The City does its best to site these towers in locations that are least offensive and some cell phone towers have co-location agreements.

Ms. MacDonald noted that this request meets the criteria for a Use Permit:

1. No significant increase in vehicular or pedestrian traffic.
2. The proposed use is similar to others in the area and there should be no nuisances created from odor, dust, gas, noise vibration, smoke, heat or glare.
3. The proposed use is not in conflict with the city's adopted plans or General Plan. There is no evidence that supports a downgrading of surrounding property values.
4. The proposed use appears to be compatible with surrounding structures and uses. The neighboring properties are all industrial uses where Monopole/Monopine structures are typically located within the City of Tempe.
5. No disruptive behavior is generated by this use. The equipment facility will be fully enclosed.

**DECISION:**

Ms. MacDonald approved PL130339/ZUP14009 subject to the assigned Conditions of Approval:

1. The use permit is valid for the plans as submitted within this application.
2. The applicant shall provide updated tenant and parking data during planning plan check process, should any parking spaces be eliminated with the installation of the Monopine or equipment.
3. The Monopine shall be no greater than 65 ft. 0 inches (sixty-five feet) in height (to the top of the branches) top of panel antennas at 60 ft. 0 inches (sixty feet).
4. The Monopine shall be designed with branches extending from twenty feet (20 ft.) to sixty-five feet (65 ft.) on the structure.
5. Obtain all clearances from Building Safety prior to use permit becoming effective.
6. Raise the height of enclosure wall to fully screen all equipment and generators.
7. All equipment to be removed within 30 days of termination of use.

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5. Request approval for a Use Permit to allow outdoor retail for **DIAMONDBACK BILLARDS (PL140019)** located at 1705 West Ruby Drive, Suite No. 107. The applicant is Steve Powers.

Diana Kaminski, Senior Planner, stated that this business is located on the south side of Ruby Drive, west of Priest Drive within the Emerald Center Complex. The applicant is proposing to display ping pong and foosball tables in front of the store to attract customers. Ms. Kaminski noted that one e-mail in opposition had been received from a Development Board representative based on the language in the CCR's which prohibit outdoor retailing and commerce. The City of Tempe does not enforce CCR's, Ms. Kaminski explained, and it is an allowed use within the Zoning and Development Code. The representative in opposition did meet with the property owner and the decision was made by the applicant to withdraw this request.

**DECISION:**

**The applicant, Steve Powers, has withdrawn the request for PL140019 / ZUP14011.**

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6. Request approval for a Use Permit to allow a 60 ft. Monopalm and equipment shelter for **VIDEO WEST – VERIZON WIRELESS PHO MALIBU (PL130230)** located at 570 West Southern Avenue. The applicant is Steve Ciolek of Coal Creek Consulting.

**REQUEST HAS BEEN MODIFIED TO 65 FT. MONOPALM AND THE CASE CONTINUED TO THE MARCH 4, 2014 HEARING OFFICER**

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7. Request approval for a Use Permit to allow a second story addition to a single family residence, and a Use Permit Standard to reduce the rear yard setback by 20% from 15 ft. to 12 ft. for the **PAPPAS RESIDENCE (PL100157)** located at 55 West 13th Street. The applicant is Derek Knuepfer of DKG Urban Concepts.

Derek Knuepfer of DKG Urban Concepts was present to represent this case.

Sherri Lesser, Senior Planner, noted that this residence is located north of Broadway, west of Mill Avenue and south of University Drive within the Maple Ash Neighborhood. The existing single story residence on this property will be demolished with consideration given for reuse of materials in the new structure. The property will be a LEED Platinum status. The rear yard will be reduced by 20% from 15 ft. to 12 ft. to allow a detached accessory building/garage. The new residence will be a two story plus basement single family residence. The structure's livable building area is 10850 s.f. and will be built at a height of 26 ft. The parking for the residence will be provided in a 1020 s.f. two car garage accessible from Ash Avenue. The house and garage are designed in a Spanish Hacienda character featuring an open air courtyard, stucco exterior, arched openings and tile roof. It will be a LEED Platinum status single family home.

Ms. Lesser noted that the applicant held a neighborhood meeting on December 23, 2013 with three (3) neighbors in attendance.

Mr. Knuepfer explained the design of the project. Ms. MacDonald asked how the roof top deck will function? Will the fencing be shoulder height? Mr. Knuepfer responded that the deck will be completely concealed by the surrounding structure.

Ms. MacDonald noted that she had a speaker's card from Mr. Atis Krigers.

Mr. Krigers noted that he is a resident of the Maple Ash Neighborhood. He referred to the size of the project (10,850 s.f.) and stated that he felt that it would change the character of the property. Mr. Krigers had several questions regarding preservation of the existing landscape, fencing and flood irrigation.

Ms. MacDonald explained to Mr. Krigers that this application does not involve a request for a variance. The criteria for a use permit and variance is different. In 2005 the Zoning and Development Code was changed and the requirements for use permit(s) and use permit standard(s) updated. The process that allows a reduction of the rear yard setback by 20% from 15 ft. to 12 ft. is a use permit standard under the current code, not a variance.

Ms. Lesser responded to a question from Mr. Krigers regarding a recording studio as a home occupation that according to the current ZDC, Appendix N, home occupation is an allowed use.

Mr. Krigers was concerned that the oleander hedge adjacent to the fence would be maintained by the Pappas property. Ms. MacDonald addressed Mr. Krigers questions to Mr. Knuepfer who explained that this is a corner property, and every effort is being made to preserve the existing mature landscape items.

Ms. MacDonald stated that the proposed wrought iron fence would weave into the oleander hedge. She asked how the landscaping would be maintained? Mr. Knuefer responded that although he travels, Mr. Pappas has received no complaints on the condition of the property.

Ms. MacDonald noted that although this project is a little larger than what we normally see, that it did meet the criteria for a use permit as follows:

- There will be no significant increase in vehicular or pedestrian traffic in adjacent areas. The location of the garage on the lot and access to the garage should have minimal impact to the surrounding area.
- There will be no nuisance from emission of odor, dust, gas, noise, vibration, smoke, heat or glare.
- The proposed development will not contribute to neighborhood deterioration or downgrade property values. It is consistent with the General Plan 2030's Land Use Element.
- It is compatible with the surrounding structures and uses.
- Adequate control of disruptive behavior is not applicable to this request.

**DECISION:**

Ms. MacDonald approved PL100157 / ZUP14012 & ZUP14013 subject to the following conditions:

1. The use permits are valid for the plans as submitted within this application.
2. The applicant shall obtain all necessary permits and clearances from the Building Safety Division and Public Works Department – Engineering for construction documents and for on-site retention.

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8. Request approval for a Use Permit to allow live entertainment for **ROOFTOP LOUNGE (PL130477)** located at 501 South Mill Avenue. The applicant is Steve Baltz of Tempe Upstairs Inc.

The applicant, Steve Baltz of Tempe Upstairs, was present to represent this case.

Diana Kaminski, Senior Planner, noted that this case was continued from the February 4 Hearing Officer public hearing and is located on the southeast corner of Mill Avenue and 5<sup>th</sup> Street, on the third floor of the historic Laird and Dines building, facing Mill Avenue. The patio was added in 2002 and the business has been owned and operated for 7 years, and has had the same management for the past 17 years. The former business was the Owl's Nest Suite 301. The current business owner added a framed stage and a covered outdoor bar without a use permit being obtained or having a Development Plan Review, and the structure did not receive building permits.

Mr. Baltz stated that the change to the Rooftop Lounge from the Owl's Nest was made approximately two years ago, and the addition of the framed stage and a covered outdoor bar with live entertainment was done with the hope of generating more income due to the economic situation. He explained his efforts to obtain the original drawings for the load ratings and that the architect for the original project had retired seven or eight years ago. The City does have copies of the original approved drawings, however they require a signature from the original designer before those drawings can be released due to design right issues. Mr. Baltz agreed that the current configuration (which was built without a permit) was kind of an eye sore the way it is now. He stated that it was not cost effective for him to continue to proceed with this request.

Ms. MacDonald noted that there are rules that need to be followed and that process includes Engineering and Building Safety review. Ms. MacDonald stated that is the reason an applicant is required to apply for a use permit before performing the work.

Ms. Kaminski explained that there are two (2) separate issues. One is the use permit request to allow live entertainment. The other is the DPR for lighting on the roof top which is currently pending the receipt of revised plans.

**DECISION:**

Mr. Baltz withdrew his request for the use permit to allow live entertainment - PL130477/ZUP14006.

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The next Hearing Officer public hearing will be held on March 4, 2014.

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There being no further business the public hearing adjourned at 3:00 PM.

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Prepared by: Diane McGuire, Administrative Assistant II  
Reviewed by:



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Steve Abrahamson, Planning & Zoning Coordinator  
for Vanessa MacDonald, Hearing Officer

SA:dm